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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,650	03/04/2002	Barry Bond	MS1-0779US	6104
22801	7590	10/27/2008		
LEE & HAYES PLLC 601 W Riverside Avenue Suite 1400 SPOKANE, WA 99201			EXAMINER NGUYEN, CINDY	
			ART UNIT 2161	PAPER NUMBER
			MAIL DATE 10/27/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/090,650	Applicant(s) BOND ET AL.	
	Examiner CINDY NGUYEN	Art Unit 2161	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-15 and 24-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2-8, 10-15 and 24-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is in response to amendment filed 07/31/08.

Response to Arguments

Applicant's arguments which respect to claim 8 and 10-15 under Claim Rejections - 35 USC § 101 have been fully considered but they are not persuasive.

Claim 8 have been amendment, however, "A computer-readable medium" has not been amended to "a computer-readable storage medium". Thus Claim 8 stand rejected.

Applicant's arguments with respect to claim 35 USC § 103 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3 and 4 recite the limitation "a medium". There is insufficient antecedent basis for this limitation in the claim.

Claims 5-7 recite the limitation "a computer-readable medium". There is insufficient antecedent basis for this limitation in the claim.

Claims 10-12 recite the limitation "a medium". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 8, 10-15 stand rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding claim 8, the claim recited “ a computer readable medium”. Since in view of Applicant’s disclosure in paragraphs 0141, the computer readable medium also includes “carrier wave”. As such, the claim is not limited to statutory subject matter and is therefore nonstatutory (see MPEP 2106).

Claims 10-15, full incorporating the deficiencies of their parent claim, are likewise rejected.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3-8, 10-15 and 24-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Van der Made (US 7093239, hereafter Van).

Regarding claim 1, Van discloses: A computer-readable medium having computer-executable modules comprising:

a file locator configured to locate an executable image on a computer media (i.e., search for the first EXE file in this directory... see col. 10, lines 33-45, Van);

a file format recognizer , configured to recognize the file format of the executable image from amongst a database of multiple file format definitions (see col. 8, lines 26-36, Van), wherein the database is extensible so that additional file format definitions may be added to the database of multiple file format definitions (see col. 7, lines 33 to col. 8, lines 25, and database of executables fig. 2, Van).

a memory-mapper configured to open the executable image from the computer media and read it into a computer memory (i.e., the file is opened and the virtual machine reads the relevant code into memory as a data stream... a memory mapping utility maps the virtual memory map to the offset of the file type that is virtualized... see col. 9, lines 2-10, Van);

an importer configured to find a list of executable image names to load (i.e., a memory mapping utility maps the virtual memory map to the offset for the file type that is virtualized, such as binary image files, executable format files document files... see col. 9, lines 10-25, Van);

an exporter configured to build a representation of program modules that an executable image exports (i.e., see col. 8, lines 61-87, Van);

a binder configured to link multiple executable images together, such images being those of the list of executable image names (i.e., compound document files can contain executable streams, such as fig. 3, file contains a linked list which is referenced in a directory structure that points to the entry point of the linked list... see col. 8, lines 37-44, Van);

Regarding claim 3, all the limitations of this claim have been noted in the rejection of claim 1 above. In addition, Van/ Lecture discloses: wherein the importer is further configured to direct the loading of multiple executable images of the list of executable image names to load (see 8, lines 40-50, Van).

Regarding claim 4, all the limitations of this claim have been noted in the rejection of claim 1 above. In addition, Van discloses: wherein the file-format recognizer is further configured to select one or more of a group of available pluggable sub-loaders is capable of loading the recognized file format of the executable image (col. 8, lines 26-36, Van).

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As per claims 5, 6 and 7, all the limitations of these claims have been noted in the rejection of claim 1. It is therefore rejected as set forth above.

Regarding claim 8, all the limitations of these claims have been noted in the rejection of claim 1. In addition, Van/ Lecture discloses: A computer-readable medium having computer-executable modules comprising: a searcher configured to search a computer media for an executable image for loading (col. 7, lines 12-50, Van);

a format recognizer configured to the format of the executable image (i.e., determine the file format... see col. 8, lines 26-36, Van);

a memory-mapper configured to load and map the executable image into memory based upon the format of the executable image (see col. 9, lines 1-10, Van);

a sub-loader configured to examine a data structure of the executable image to determine whether to load additional images (see col. 9, lines 19-30, Van);

Regarding claim 10, all the limitations of this claim have been noted in the rejection of claim 8 above. In addition, Van discloses: wherein one or more modules of the medium are configured to be replaced with a replacement module without recompilation of one or more modules (see col. 11, lines 35-45, Van).

Regarding claim 11, all the limitations of this claim have been noted in the rejection of claim 8 above. In addition, Van discloses: wherein the memory-mapper is

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further configured to convert the executable image before mapping it into the memory (col. 7, lines 4-9, Van).

Regarding claim 12, all the limitations of this claim have been noted in the rejection of claim 8 above. In addition, Van e discloses: wherein the memory-mapper is further configured to decrypt the executable image before mapping it into the memory (col7, lines 4-9, Van).

As per claims 13, 14 and 15, all the limitations of these claims have been noted in the rejection of claim 8. It is therefore rejected as set forth above.

Regarding claim 24, Van disclose: a computer implemented method facilitating loading of one or more executable images of varying formats, the method comprising: locating an executable image on a computer media (search for the first EXM file in this directory... see paragraph col. 10, lines 33-34, Van);

investigating information related to the executable image, thereby identifying the format of the executable image, wherein: during the investigating, accessing an extensible database of executable-image formats (i.e., the file structure analysis procedure looks in the file header and file structure to determine the file format... see coll. 8, lines 30-33 and the program code is checked against the database for known files, if the file is new or modified, it is processed, the resulting behavior signature is

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analyzed or compared and stored... see col. 7, lines 32 to col. 8, lines 20; and col. 11, lines 8-30, Van); and

the investigating accesses a header of the executable image in order to identify the format (i.e., the file structure analysis procedure looks in the file header and file structure to determine the file format... see coll. 8, lines 30-33, Van);

initiating an extensible loader associated with the identified format, the extensible loader being pointed to by an entry (see col. 7, lines 41-46, Van);

loading the executable image into a computer memory using the extensible loader, wherein the loading (see col. 8, lines 25-36, Van) comprises:

calling an entry point located in loaded program libraries in order to load the executable image (col. 7, lines 42-56, Van);

creating a new process based on the entry point (col. 9, lines 1-8, Van);
creating necessary sections within the loaded program libraries for the executable image (see col. 7, lines 46-48, Van);

creating an initial thread for the executable image (see col. 9, lines 38-42, Van);
and

handing over control from the extensible loader to the initial thread in order to execute the executable image (see l. 10, lines 5-14, Van).

Regarding claim 25, Van discloses; A computer-readable storage medium storing instructions that, when executed, configure a computer to perform the method of claim 24 (see col. 9, lines 44-47, Van).

Regarding claim 25, Van discloses; a computer comprising a processor configured to perform the method of claim 24 (see col. 7, lines 14-25, Van).

Contact information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cindy Nguyen whose telephone number is 571-272-4025. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Apu Mofiz can be reached on 571-272-4080. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Cindy Nguyen

/C. N./

Examiner, Art Unit 2161

/Apu M Mofiz/

Supervisory Patent Examiner, Art Unit 2161